ARTICLE 9

SECTION 10

LOANS

1. GENERAL

This section provides instructions for evaluating loans as property.

2. EXEMPTION CRITERIA

Loans are exempt and not counted in the property reserve in any month in which they are: MEM 50483

A. Exempt as income per MPG Article 10, Section 2; or

B. Counted as income in the month of receipt because they do not have to be repaid.

3. LOANS REQUIRING REPAYMENT

Loans which must be repaid, and are not exempt or counted as income are included in the property reserve beginning with the month of receipt. See MPG Article 9, Section 1 for instructions on treatment of property in excess of the property limit.

4. DETERMINATION OF REPAYMENT

The worker will evaluate a loan using the following criteria to determine if a loan must be repaid. MEM PROC. 9D

A. Commercial Loans

Commercial loans are usually negotiated between two or more individuals and financial institutions such as banks or finance companies, and involve formal contracts. These formal contracts usually specify the borrower's promise to pay a designated sum of money at a specified time upon demand.

When only a portion of the loan must be repaid, as may be the case with certain nonexempt student loans, only the portion that must be repaid is considered property in the month of receipt. The remaining portion is considered income and is apportioned in accordance with MPG Article 10, Section 4.

B. Personal Loans

Personal loans are negotiated between private parties and are often informal. They may involve oral or written agreements.

To be considered property for Medi-Cal purposes, a personal loan must be based on an agreement, written or oral, which contains the followings components:

1) The borrower's acknowledgement of an obligation to repay (with or without interest) and

2) Either:

   a) A timetable and plan for repayment (i.e., the borrower plans to repay the loan when he/she receives future income) or

   b) The borrower's express intent to repay the loan by pledging real or personal property or anticipated income as collateral (i.e., the loan will be repaid as soon as unemployment insurance begins or employment begins).

C. Home Equity Conversion (HEC) Plans

HEC Plans allow homeowners age 65 and over to convert the equity in their homes into cash without being forced to leave the home. This enables elderly homeowners to increase their available monthly cash. Since these plans are loans requiring repayment, the proceeds are to be considered property.

Some HEC Plans may provide that part of the purchase price of the home be used to purchase an annuity payable to the homeowners for life. The payments from these are considered unearned income.

The Department anticipates an infrequent use of these plans by elderly homeowners because the proceeds are counted as property for Medi-Cal eligibility purposes.

A summary of the most prevalent HEC Plans is provided below. However, there are endless variations of these plans, and each plan should be examined on an individual basis. A copy of an individual's HEC Plan must be filed in the case folder under the "property" tab.

1) Reverse Annuity Mortgage (RAM)

   RAM HEC Plans allow a homeowner to borrow, through a formal mortgage contract, 60 to 80 percent of the appraised value of the home equity for a specified period of time. The homeowner receives funds periodically for the duration of the lending period. This type of loan must be repaid.

2) Deferred Payment Loan (DPL)

   The DPL is similar to a RAM but differs in the following ways:

   a) Rather than being used as a supplemental monthly income, the proceeds from the DPL are used for some specific purpose, such as payment of real estate taxes, home repairs, or major personal expenses.

   b) The DPL is received from the lender in one lump sum rather than in periodic payments.

c) The DPL is secured by placing a lien on the property, which must be satisfied in order to sell the property.

d) The amount of the loan may be recovered from the estate upon the death of the homeowner.

3) Sale-Leaseback

Sale-leaseback is an arrangement where an investor (buyer) purchases the home from an elderly person (seller) and as part of the sales agreement, leases the home back to the seller. The lease allows the seller to live in the home either for life or until a specified time.

The buyer usually pays the seller a down payment and monthly installments on an interest-bearing promissory note. The interest on the note is considered unearned income in the month of receipt. If the note can be sold, it is counted as property under MPG Article 9, Section 9. The buyer is responsible for payment of real estate taxes, major maintenance costs, and casualty insurance. The value of these items is not considered in-kind income because the seller is paying rent to the buyer.

The seller pays the buyer rent. If the payments on the note are greater than the rental fee, the difference minus the interest portion of the monthly payment will be treated as cash on hand and included in the property reserve.

EXAMPLE: Monthly note payment is $800.00. The rental fee is $500.00. The interest portion is $15.00. $800.00 - rental fee of $500.00 - interest $15.00 = $285.00 cash on hand.

4) Time Sale

In a Time Sale HEC Plan, an elderly homeowner contracts to sell his/her home at death. In the meantime, he/she retains title and the right of continued residence in the home. In effect, under this arrangement, the homeowner retains a life estate.

The buyer usually agrees to pay property insurance, property taxes, and certain maintenance and repair costs, plus a monthly cash amount to the homeowner during his/her lifetime. These proceeds shall be considered property conversion whether paid in cash or in-kind.

D. Verification of Loans

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To determine if a loan requires repayment, it is necessary to view the documentation. Verifications are:

1) In the case of the written contracts, the actual formal contract that indicates the repayment arrangement and method of payment; or

2) In the case of oral agreements on personal loans, a statement from the borrower and the lender must be obtained that documents that the conditions of repayment existed when the loan occurred.

3) A copy of the verification will be filed in the case folder under the "property" tab.